

**THIRD AMENDMENT TO  
CONSULTANT AGREEMENT  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
FAIRBANK, MASLIN, MAULLIN, METZ & ASSOCIATES, INC. (FM3)  
(FORMERLY KNOWN AS FAIRBANK, MASLIN, MAULLIN & ASSOCIATES, INC.)  
FOR VARIOUS SURVEYS  
(2008 – 2014)**

This THIRD AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and FAIRBANK, MASLIN, MAULLIN, METZ & ASSOCIATES, INC. a California corporation ("CONSULTANT").

**RECITALS**

WHEREAS, on June 10, 2008, CITY and CONSULTANT entered into an agreement entitled "Agreement for Consultant Services Between the City of San José and Fairbank, Maslin, Maullin & Associates, Inc. for Various Surveys (2008-2011)" ("AGREEMENT"); and

WHEREAS, on June 8, 2010, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to modify the scope of services to include additional services, to increase the amount of total compensation allowed, and to recognize the change in name of the contracting entity; and

WHEREAS, on June 21, 2011, CITY and CONSULTANT entered into a Second Amendment to the AGREEMENT to extend the term of the AGREEMENT through June 30, 2014, to modify the scope of services to include additional services, to reduce the compensation levels, and to increase the amount of total compensation allowed; and

WHEREAS, CITY and CONSULTANT desire to amend the AGREEMENT to modify the scope of services to include additional services, and to increase the amount of total compensation allowed;

NOW, THEREFORE, the parties agree to further amend the amended AGREEMENT as follows:

**SECTION 1.** SECTION 4, "COMPENSATION" is amended to read as follows:

"The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed SEVEN HUNDRED THREE THOUSAND Dollars (\$703,000.00). The rate and schedule of payment is set out in THIRD REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

**SECTION 2.** SECOND REVISED EXHIBIT B, "SCOPE OF SERVICES" is amended to read as shown in THIRD REVISED EXHIBIT B, attached and incorporated into this Third Amendment.

**SECTION 3.** SECOND REVISED EXHIBIT C, "SCHEDULE OF PERFORMANCE" is amended to read as shown in THIRD REVISED EXHIBIT C, attached and incorporated into this Third Amendment.

**SECTION 4.** SECOND REVISED EXHIBIT D, "COMPENSATION" is amended to read as shown in THIRD REVISED EXHIBIT D, attached and incorporated into this Third Amendment.

**SECTION 5.** All of the terms and conditions of the amended AGREEMENT not modified by this Third Amendment shall remain in full force and effect.

RD:NXN;LCP  
8-15-13

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

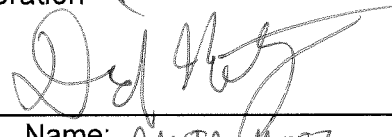
CITY OF SAN JOSE, a municipal  
corporation

Neelam Naidu 8/28/13  
NEELAM NAIDU  
Deputy City Attorney

By \_\_\_\_\_  
TONI TABER, CMC  
Acting City Clerk

"CONSULTANT"

FAIRBANK, MASLIN, MAULLIN, METZ &  
ASSOCIATES, INC., a California  
corporation

By   
Name: DAVID METZ  
Title: PRESIDENT  
Date: 8-19-13

## **THIRD REVISED EXHIBIT B**

### **SCOPE OF SERVICES**

Upon appropriation of funds for services within the applicable fiscal year, and at the direction of the City Manager or the City Manager's designated representative, CONSULTANT shall conduct: (1) surveys of CITY employees and CITY residents to provide performance measurement data and assess satisfaction with CITY services, (2) surveys of CITY residents to determine their budget priorities, and (3) surveys of likely CITY voters about potential ballot measures. Following the completion of each survey, CONSULTANT will provide:

- A questionnaire with the top-line results of the survey for easy reference
- Two copies of a complete set of crosstabs in an easy-to-read, comprehensive format
- Verbatim responses to open-ended questions
- A written summary report
- A concise analysis of survey results in PowerPoint
- A presentation of the survey via webinar or in-person

In conducting this research, CONSULTANT shall perform the following services:

#### **A. Community Survey**

CONSULTANT shall perform the following Community Survey services upon the direction of the City Manager:

1. Modify the existing survey questionnaire in consultation with CITY.
2. Translate the questionnaire into Spanish and Vietnamese.
3. Conduct a telephone survey using Random Digit Dialing to generate at least 900 responses from City of San Jose residents. The survey will have an average length of not more than 20 minutes, and will be conducted in English, Spanish, and Vietnamese.

4. Design and generate cross-tabulations and other statistical tables as needed to conduct the analysis.
5. Code open-ended responses, if any, for computer analysis.
6. Meet with CITY to discuss the data analyzed and subsequent recommendations.
7. Benchmark survey results with other municipalities in consultation with CITY staff.
8. Prepare a summary report, including all relevant tables. Provide CITY with twenty (20) copies of the report, a camera-ready copy, and a complete set of the survey data.
9. Present survey results to CITY staff and Council.

#### **B. Employee Survey**

CONSULTANT shall perform the following Employee Survey services at the direction of the City Manager:

1. Modify the existing employee survey questionnaire in consultation with CITY.
2. Provide both an English and Spanish version of the final survey questionnaire.
3. Develop a printed and/or online survey available to all employees.
4. Provide follow-up postcards or electronic notices to all employees who have not responded to the survey.
5. Perform computer analysis of all responses received in the employee questionnaire.
6. Code open-ended responses, if any, for computer analysis.
7. Design and generate cross-tabulations and other statistical tables as needed to conduct analysis. CONSULTANT will produce results by department and key work group.

8. Prepare a summary report, including all relevant tables. Provide CITY with at least twenty (20) copies of the report, a camera-ready copy, and a complete set of the survey data.
9. Meet with CITY to discuss the data analyzed and subsequent recommendations.
10. Benchmark survey results with other municipalities in consultation with CITY staff.
11. Present results to CITY staff and Council.

The City Manager or the City Manager's designated representative shall have the right to prior review and approval of the content of all CONSULTANT's work specified in this THIRD REVISED EXHIBIT B, including but not limited to the content of all materials and products produced herein. All work performed by CONSULTANT pursuant to this AGREEMENT shall be to the satisfaction of the City Manager.

### **C. Confidentiality of Employee Survey Responses**

1. In order to obtain the highest possible rate of response to the employee survey, CONSULTANT will send employees who have not completed the survey within a certain period of time after its initial distribution a follow-up notice to encourage their participation.
2. In order to facilitate the sending of follow-up notices to employees who have not responded, CONSULTANT will assign a unique numeric code that will appear on the initial survey questionnaire of each individual employee. Once a completed survey questionnaire or online response with a given numeric code has been received, the name associated with that code will be removed from the list for any follow-up communications regarding the survey. CONSULTANT will send a follow-up notice to other employees who remain on the list.
3. CONSULTANT acknowledges that information identifying individual employee responses to the survey is valuable, secret and confidential. CONSULTANT will

preserve the anonymity of individual survey respondents by taking all reasonable steps to maintain the secrecy and confidentiality of such information and preventing its unauthorized use or disclosure.

4. CONSULTANT will not use or copy such information, except to the extent necessary to perform its obligations under this AGREEMENT, and will not disclose such information to anyone but CONSULTANT's own personnel and subcontractors. Under no circumstances will CONSULTANT disclose such information to any employee or agent of the CITY.
5. CONSULTANT will remove individual employee code numbers from all CONSULTANT datasets and hard copy responses before analysis of the survey response data begins. CONSULTANT shall not report survey data to the CITY that identifies individual employee responses, nor aggregate employee responses in any level smaller than a "work group." CONSULTANT will remove all individual employee code numbers from hard copy responses mailed back to CONSULTANT after initial data entry.

#### **D. Budget Priorities Survey**

CONSULTANT shall perform the following Budget Priorities Survey services at the direction of the City Manager:

1. Modify the existing survey questionnaire in consultation with CITY.
2. Translate the questionnaire into Spanish and Vietnamese.
3. Conduct a telephone survey to generate responses from at least 900 City of San José residents as follows:
  - a. 450 interviews with likely voters
  - b. 400 random-digit dialed interviews with adult residents
  - c. 50 random-digit dialed interviews with adult residents specifically on cell phones

The survey will have an average length of not more than 20 minutes, and will be conducted in English, Spanish, and Vietnamese.

4. Design and generate cross-tabulations and other statistical tables as needed to conduct the analysis.
5. Code open-ended responses, if any, for computer analysis.
6. Meet with CITY to discuss the data analyzed and subsequent recommendations.
7. Benchmark survey results with other municipalities in consultation with other CITY staff.
8. Prepare a summary report, including all relevant tables. Provide City with an electronic copy of the report, and up to twenty (20) copies of the complete set of survey data.
9. Present survey results to CITY staff, Council, and not more than three community meetings.

#### **E. Ballot Measure Feasibility Survey**

CONSULTANT shall perform the following Ballot Measure Feasibility Survey services at the direction of the City Manager:

1. Create survey questionnaire in consultation with CITY.
2. Translate the questionnaire into Spanish and Vietnamese.
3. Conduct a telephone survey using Random Digit Dialing to generate at least 800 responses from likely CITY voters. The survey will have an average length of not more than 20 minutes, and will be conducted in English, Spanish, and Vietnamese.
4. Design and generate cross-tabulations and other statistical tables as needed to conduct the analysis.
5. Code open-ended responses, if any, for computer analysis.
6. Meet with CITY to discuss the data analyzed and subsequent recommendations.



7. Benchmark survey results with other municipalities in consultation with CITY staff.
8. Prepare a summary report, including all relevant tables. Provide CITY with twenty (20) copies of the report, a camera-ready copy, and a complete set of the survey data.
9. Present survey results to CITY staff and Council

### **Additional Services**

As requested in writing by the City Manager or the City Manager's designee, CONSULTANT will provide technical assistance with other surveys required by CITY.

**THIRD REVISED EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

The estimated time for completion of services as specified in THIRD REVISED EXHIBIT B is as follows. The City Manager is authorized to modify this schedule in writing.

<u>Task</u>	<u>Completion Date</u>
Budget Priorities Survey	March 30, 2009 March 30, 2010 March 30, 2011 March 30, 2012 March 30, 2013
Employee Survey	March 30, 2009 March 30, 2011
Community Survey	March 30, 2010
Other Services	As directed by the City Manager.

<b>FY 2013-2014 Surveys</b>	<b>Completion Date</b>	<b>Sample Frame</b>	<b>Sample Size</b>	<b>Length</b>
2013 Community Survey	August 31, 2013	RDD	N=900	25 Min.
2013 Ballot Measure Feasibility Survey	October 30, 2013	Voters	N=800	20 Min.
2014 Budget Priorities Survey	January 31, 2014	Voters/ RDD	N=900	20 Min.
2014 Ballot Measure Feasibility Survey	March 30, 2014	Voters	N=800	20 Min.
2014 Employee Survey	TBD 2014	All City Employees	Several Thousand	20 Min.

**THIRD REVISED EXHIBIT D**  
**COMPENSATION**

CITY agrees to compensate CONSULTANT at rates consistent with the rates specified below for professional services performed in accordance with the terms and conditions of this AGREEMENT. The length of each survey is to be determined in consultation with CITY.

For each survey, CONSULTANT will invoice CITY based on the following payment schedule:

<u>Milestone</u>	<u>Amount of Payment</u>
Completion of final survey instrument	1/3 of cost of survey
Submission of cross-tabulation survey results	1/3 of cost of survey
Presentation of final report to City Council	1/3 of cost of survey

Services related to the Community Survey will be compensated at the following rates:

<u>Task</u>	<u>Total Compensation Not to Exceed</u>
Community Survey	
City will choose one of the following options:	
15-Minute Survey	\$40,500
20-Minute Survey	\$46,500
25-Minute Survey	\$52,500

Services relating to the Employee Surveys will be compensated at the following rates.

<u>Task</u>	<u>Total Compensation Not to Exceed</u>
Employee Survey (prior to July 1, 2013)	\$43,000 per survey
Employee Survey (FY13-14)	\$30,000 per survey

Services relating to Budget Priorities Surveys will be compensated at the following rates.

<u>Task</u>	<u>Total Compensation Not to Exceed</u>
Budget Priorities Survey	
City will choose one of the following options for each survey:	
15-Minute Survey	\$38,500 per survey
20-Minute Survey	\$44,500 per survey
25-Minute Survey	\$50,500 per survey

Services relating to Ballot Measure Surveys will be compensated at the following rates.

<u>Task</u>	<u>Total Compensation Not to Exceed</u>
Ballot Measure Feasibility Survey	
City will choose one of the following options:	
N = 600:	
15-Minute Survey	\$30,500 per survey
20-Minute Survey	\$35,250 per survey
25-Minute Survey	\$40,250 per survey
N = 800:	
15-Minute Survey	\$35,500 per survey
20-Minute Survey	\$40,000 per survey

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25-Minute Survey

\$48,500 per survey

**SUBTOTAL**

**\$698,320**

Additional services: technical support for  
department surveys

\$120/hour not to  
exceed \$4,680

**TOTAL NOT TO EXCEED**

**\$703,000**

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT for professional services shall not exceed SEVEN HUNDRED THREE THOUSAND Dollars (\$703,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY. The rates specified above include all expenses and costs for materials.